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August 31, 2006

By Hand

The Honorable Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Suite 800
Washington, D.C. 20423-0001



RE: STB Finance Docket Nos. 34421 and 34421 (Sub-No. 1)
HolRail LLC Petition for Exemption from 49 U.S.C. § 10901 To
Construct and Operate a Rail Line in Orangeburg and Dorchester
Counties, South Carolina
-HolRail LLC- Petition for Crossing Authority Under 49 U.S.C. § 10901(d)

Dear Secretary Williams:

Enclosed please find an original and ten (10) copies of HolRail LLC's Motion for Oral Argument to be filed in the above referenced proceeding.

Also, enclosed is one additional copy of the pleading for stamp and return. Kindly date-stamp the additional copy for return to this office by messenger.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

Jeffrey O. Moreno
Attorney for HolRail LLC

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Public Record

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NOS. 34421 AND 34421 (Sub-No. 1)



**HOLRAIL LLC PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 TO
CONSTRUCT AND OPERATE A RAIL LINE IN ORANGEBURG AND DORCHESTER
COUNTIES, SOUTH CAROLINA**

**HOLRAIL LLC—
PETITION FOR CROSSING AUTHORITY UNDER 49 U.S.C. § 10901(d)**

HOLRAIL LLC's MOTION FOR ORAL ARGUMENT

HolRail LLC ("HolRail") hereby submits this "Motion for Oral Argument" ("Motion") in the above captioned proceedings. These proceedings raise important issues of first impression that would benefit from the opportunity for the Board to engage the parties in a substantive discussion of the pivotal facts and legal arguments.

These proceedings concern HolRail's Petition for Exemption from 49 U.S.C. § 10901, pursuant to 49 U.S.C. § 10902, and Petition for Crossing Authority, pursuant to 49 U.S.C. § 10901(d), to construct approximately 2.3 miles of new rail line over one of two alternative routes in order to bring competitive rail service to a cement production facility owned by HolRail's corporate parent, Holcim (US) Inc. HolRail has presented both a "Preferred" and an "Alternate" route, but has strongly urged the Board to approve the Preferred Route due to the significant environmental issues associated with the Alternate Route. Because the Preferred Route would cross the property of CSX Transportation, Inc. ("CSXT") for approximately 1.7 miles, HolRail has filed both a Petition for Exemption and for Crossing Authority.

HolRail's proposed crossing of CSXT's property differs from more typical crossings in that HolRail would cross the length of CSXT's right-of-way, parallel to CSXT's existing track,

as opposed to crossing the width of CSXT's right-of-way, perpendicular to CSXT's track. In opposition to the Preferred Route, CSXT has challenged not only whether HolRail has satisfied the applicable statutory standards for authorization to construct the Preferred Route, but also whether the Board has any authority at all to authorize that Route. Thus, the Board must decide both whether it has the authority to authorize construction of HolRail's Preferred Route, and if so, whether it should grant such authorization in this case.

These are questions of first impression that are essential to a decision in this case. The legal issues concerning the Board's authority to grant HolRail's petitions have never before been decided by the Board and thus will establish precedent for the future. If the Board concludes it does have authority to authorize HolRail's proposed construction, its decision whether to exercise that authority in this case will be based in significant part upon important policy considerations. In order to address these questions, the Board must interpret statutory law and its own precedent, apply the law to the facts of this case in a manner that has not previously been requested by any petitioner, and in so doing, carefully assess the impact upon the national rail transportation policies.

The Board's assessment is complicated by fundamental disagreements among HolRail and CSXT as to the applicable statutory standards and their meaning, the weight and relevance of certain facts, and the impact upon the national rail transportation policies. For example, the parties are in disagreement as to the relevant roles played by 49 U.S.C. §§ 10901(c), 10901(d), and 10502(a), and the standards imposed by those statutes. In addition, CSXT has challenged the relevance (but not the facts) of the environmental issues that HolRail has identified as so important to the selection of its Preferred Route over the Alternate Route, and CSXT has made numerous assertions of fact that HolRail has challenged as spurious speculation, belied by reality

and common sense, and designed to alarm the Board unnecessarily. Perhaps most importantly, the parties have made divergent assertions regarding the impact of granting HolRail's petitions upon the national rail transportation policies.

At the center of this policy debate is whether granting HolRail's petitions would open the door to similar requests that could require every major railroad in the country to share their rights-of-way with new competitors. CSXT has made precisely this prediction. HolRail, however, demonstrates that the combination of facts in support of its petitions are so narrow and unique that very few other petitioners could ever satisfy the standards that might arise from this proceeding. Instead, HolRail contends that the transportation policies of enhanced competition and reduced barriers to entry are most important to the Board's decision in this case. An oral argument would permit a thorough examination of these issues by the Board.

The Board previously has acknowledged the unique and complex issues presented by this case. In a decision served on October 24, 2004, the Board determined that these issues warranted a deviation from its usual process of granting construction authorization prior to completion of the environmental review and from its process of considering crossing issues under Section 10901(d) separate from construction issues under Section 10901(c).

HolRail's entire case – indeed, even the details of how its construction proposal will look – is inextricably bound up with the crossing issue. Therefore, we will not approach this case in a piecemeal fashion, and we will not rule on the exemption petition until all components of HolRail's proposal, including the anticipated crossing petition, are before us.

October 24th Decision at 3. In addition to this declaration by the entire Board, Commissioner Buttrey separately observed that "this case is anything but routine." *Id.* at 5. Moreover, CSXT itself sought and obtained from the Board an extension of the procedural schedule due to the "issues of first impression and complex engineering" presented by this case. *January 11th*

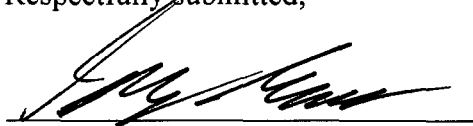
Decision at 1. Thus, HolRail, CSXT and the Board are all on record as acknowledging the complex and unique issues presented by HolRail's Petitions.

The very nature of this case as one of first impressions justifies an oral argument. An oral argument would permit the Board to probe the contested issues more thoroughly and it will facilitate a comprehensive consideration of the rail transportation policies underlying the relevant statutory provisions, thereby permitting the Board to fully explore whether HolRail's project would promote or detract from those policies. Furthermore, it would allow the parties to respond directly to those issues that most concern the Board, in order to reach the best decision on a full and complete record. There can be no more compelling reason for ensuring a full and complete record is established than the fact that this case is one with such unique characteristics.

The time is now appropriate to hold an oral argument. The parties have submitted all substantive material on the merits of HolRail's Petitions. CSXT filed its Reply to HolRail's September 9, 2005 supplemental evidence and crossing petition on February 24, 2006 and HolRail sought leave to file a Rebuttal on March 10, 2006. All that remains to be completed before a final decision can be issued is the Environmental Impact Statement, which the Board's Section of Environmental Analysis has been preparing over the past year while this case has progressed on the merits. Furthermore, with the recent appointment of a new Chairman, the Board is now fully constituted by the members who will decide this case.

WHEREFORE, for the foregoing reasons, HolRail requests that the Board hold an oral argument in these proceedings and grant each party 20 minutes to present their arguments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey O. Moreno', is written over a horizontal line.

Jeffrey O. Moreno
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Attorney for HolRail LLC

August 31, 2006

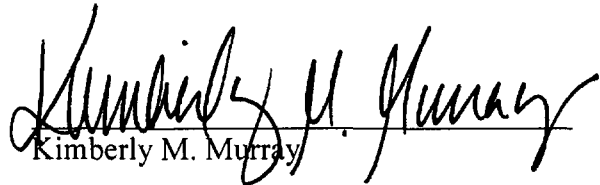
CERTIFICATE OF SERVICE

I hereby certify that this 31st day of August, 2006, I served a copy of the foregoing "Motion for Oral Argument" by hand delivery upon counsel for CSX Transportation, Inc., at the following address:

Louis E. Gitomer, Esq.
118 Sunnymeadow Lane
Reisterstown, MD 21136

and counsel for Intervenor, at the following address:

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Troutman Sanders
401 Ninth Street, N.W.
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Kimberly M. Murray